HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.BHAVANI PRASAD

WRIT APPEAL No.898 OF 2006

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Between:
P. Vamshidhar Rao

..... Appellant

AND

Prohibition & Excise Superintendent,
Karimnagar and others. ...Respondents

::JUDGMENT::

Counsel for the Appellant : Sri E.Manohar, Senior Advocate
assisted by Sri S.Satyam Reddy.

Counsel for the Respondents : Government Pleader for Prohibition & Excise.

30th August, 2006.

Per G.S.Singhvi, C.J.

Having failed to persuade the learned Single Judge to nullify order dated 21-7-2006 passed by Prohibition and Excise Superintendent, Karimnagar (respondent No.1) disapproving the premises suggested by him for establishing liquor shop, the appellant has filed this appeal under Clause 15 of the Letters Patent.

For deciding the issue raised in the appeal, we may brief notice the facts.

In furtherance of Notification No.56/157, dated 1-7-2006 issued by Collector and District Magistrate, Karimnagar-cum-Auctioning Authority (respondent No.3), the appellant submitted tender for grant of lease of right to sell Indian made foreign liquor/foreign liquor by shop under Rule 5 of the Andhra Pradesh Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005 (for short, 'the Rules') in respect of Teegalaguttapalli village, Karimnagar Mandal. On being declared successful bidder, the appellant made the necessary deposit and submitted sketch map of the premises bearing Door No.5-5/A, Teegalaguttapalli village for establishing shop. Respondent No.1 forwarded the appellant's application to Station House Officer, Karimnagar Rural, who, after inspecting the proposed site submitted report with the following observations:

(i) that the proposed premises is very near (150 meters) from the border of Karimnagar Municipal Corporation limits and 2 km. away from the main village of Teegalaguttapalli, which is a hamlet of Arepally Revenue village of Karimnagar Mandal with

population of 4612 (as per 2001 census),

(ii) that there would be law and order problem by establishing shop in the proposed premises, and

(iii) that this would affect the Revenue of Karimnagar Municipal Corporation.

After considering the report of the Station House Officer, respondent No.1 passed order dated 21-7-2006 whereby he declined to approve the proposed site and directed the petitioner to select another suitable premises in the main village of Teegalaguttapalli. The relevant extracts of that order are reproduced below:

> "The SHO., Karimnagar (Rural) has submitted a report stating that he has inspected the proposed premises on 19-7-2006 and found the premises to be very near i.e., (150) meters from the border of Karimnagar Municipal Corporation limits and two K.Ms. away from the main village of Teegalaguttapalli which is a hamlet of Arepally Revenue Village of Karimnagar Mandal (population as per 2001 census : 4612).
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> In his report the SHO, Karimnagar has expressed that there would be law and order problem and establishment of this shop would affect the Revenue of Karimnagar Municipal Corporation shops.
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> Earlier, during the year 2005-06, one IML shop under name and style of M/s.Mega Wines was run in the main village of Teegalaguttapalli (v) in ward No.1 as such not recommended for issue of licence in the proposed premises.
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> Under Rule 27(1) of A.P. Excise (Lease of Right of selling by Shop) Rules, 2005, the successful tenderer subject to approval of the Proh. & Excise Superintendent shall select the suitable premises for sale of IL & FL within the Municipal Corporation, Municipality, village/Town/City or area/ locality as the case may be as notified in the

district Gazette.

The very purpose of the Department in notifying of an A4 shop at Teegalaguttapalli village is to meet the liquor needs of that particular village. The selection of premises by the applicant nearby Karimnagar Municipal Corporation may cause to develop unhealthy competition among the licensees of Karimnagar Urban and Rural Station limits, resulting law and order problem.

In view of the above, the premises bearing H.No.5-5/A, which is found to be very near i.e., (150) meters from the border of Karimnagar Municipal Corporation limits and two K.Ms. away from the main village of Teegalaguttapalli, is hereby not approved for establishment of A4 shop by the successful tenderer of shop Gaz.Sl.No.25."

The appellant challenged the aforementioned order in Writ Petition No.15704 of 2006 by contending that the reasons assigned by respondent No.1 for refusing to approve the proposed site are extraneous to Rule 27(1) of the Rules. He also pleaded that the impugned decision is vitiated by arbitrariness and mala fide exercise of power.

In the counter affidavit filed by Sri Y.G.K. Murthy, Prohibition and Excise Superintendent (FAC), Karimnagar, it was avered that while refusing to approve the premises proposed by the writ petitioner (appellant herein), the competent authority had taken into consideration the relevant factors like previous location of the shop, satisfaction of the liquor needs of the residents of Teegalaguttapalli village and the report of the Station House Officer, which indicated that there was a possibility of law and order problem. Sri Murthy further averred that the locality where the writ petitioner selected his premises has scattered habitation of around 400 people, whereas the total population of Teegalaguttapalli village is 4621.

The learned Single Judge adverted to the factual matrix of the case, Rule 27(1) of the Rules, the judgment of this Court in **Ch. Subrahmanyeswara Rao v. Commissioner, Prohibition & Excise, Hyderabad**[1] and held that the reasons assigned by respondent No.1 for declining to approve the site proposed by the writ petitioner for establishing shop do not suffer from any legal infirmity. The learned Single Judge further held that the decision of respondent No.1 not to approve the location of the shop near the border of Karimnagar Municipal Corporation limits cannot be termed as arbitrary or un-reasonable warranting interference under Article 226 of the Constitution of India.

Sri E.Manohar, learned Senior Counsel appearing for the appellant argued that even though Rule 27 (1) of the Rules empowers the Prohibition and Excise Superintendent to decide the suitability of the premises for location of shop, the same is subject to the High Court's power of judicial review under Article 226 of the Constitution of India and the learned Single Judge committed a serious error by refusing to nullify order dated 21-7-2006 despite the fact that the decision of respondent No.1 was based on extraneous reasons and irrelevant considerations. Learned counsel emphasized that order dated 21-7-2006 was passed by respondent No.1 at the instance of the existing licensee and the factors like possibility of unhealthy competition and adverse impact on law and order situation were unnecessarily projected to justify an otherwise arbitrary decision. Sri E.Manohar then submitted that the Court should lay down guidelines so that the competent authority is not able to arbitrarily refuse approval to the location of shop by the highest bidder.

Learned Government Pleader for Prohibition and Excise

supported the order of the learned Single Judge and argued that the factors like adverse impact on the law and order situation, reduction in revenue of the Municipal Corporation and unhealthy competition among the licensees could legitimately be taken into consideration for the purpose of declining approval to the site proposed by the appellant.

We have given serious thought to the respective arguments. Rule 27 of the Rules, which regulates selection of premises reads as under:

27. Selection of Premises:-

(1) The successful tenderer subject to the approval of Prohibition and Excise Superintendent, shall select suitable premises for sale of IL & FL within the Municipal Corporation, Municipality, village/town/city or area/locality as the case may be as notified in the District Gazette. It shall be at least 100 meters away from the place of Public worship, Educational Institutions, Hospitals and 50 meters away from Highways.

Explanation:- For the purpose of this rule-

(a) “place of public worship’ means a temple registered with the Endowment Department, Mosque registered with Wakf Board and Church and includes such other religious institutions, as the State Government may by order specify in this behalf,

(b) “Educational Institutions” means any Primary School, Middle School and High School recognized by the State Government or Central Government, Junior College or any College affiliated to any University established by law,

(c)“High Way” means National High Way or State High way and shall not passes within the limits of Municipal Corporation, Municipal Council or the Gouthan in any

village or Panchayat area,

(d)“Hospital” means any hospital which is managed or owned by a local authority, State Government or Central Government or any private hospital having a provision of at least thirty (30) beds,

(2) The distances referred above shall be measured from the mid-point of the entrance of the licensed premises along with the nearest path by which pedestrian ordinarily reaches to the mid-point of the nearest gate of the institution or a place of public worship, if there is a compound wall and if there is no compound wall to the mid-point of the nearest entrance of the institution/place of public worship.

(3) The boundaries of the premises shall be indicated in the Licence.

(4) There shall be a single door for entry and exit and sales shall be conducted through without giving entry to the customers inside the premises.

An analysis of the above reproduced rule shows that the successful bidder is required to select suitable premises for sale of Indian liquor and foreign liquor within the Municipal Corporation, Municipality, village/town/city or area/locality, which may be notified in the District Gazette. This rule also contains a restriction on the location of premises within 100 meters from the places of public worship, educational institutions and hospitals. The expression ‘suitable premises’ has not been defined in Rule 27(1), but it has to be construed keeping in view the larger public interest. In a given case, the competent authority can refuse to approve location of the premises despite the fact that the same may be beyond 100 meters from the places of public worship, educational institutions and hospitals. The possible deterioration

of law and order problem on account of location of shop in a particular premises is certainly a factor which has bearing on public interest. Similarly, unhealthy competition among the licensees is also a relevant factor which can be taken into consideration by the competent authority while deciding the application for approval of suitable premises.

In **Asst. Commissioner of Prohibition & Excise v. K. Vidya Sagar**[2], a Division Bench of this Court interpreted Rule 6 of the Andhra Pradesh (Indian and Foreign Liquor Retail Sale Conditions of Licence) Rules, 1993 which is substantially similar to Rule 27 of the Rules and held that the competent authority has the discretion to refuse approval to the premises proposed by the licensee and the Court will not interfere with the exercise of such discretion unless it is shown to be tainted by arbitrariness or mala fides.

In **Ch. Subrahmanyeswara Rao v. Commissioner, Prohibition & Excise, Hyderabad** (supra), the learned Single Judge interpreted Rule 27 of the Rules, referred to the judgment of the Division Bench in **K. Vidyasagar's** case and observed:

> "9. A perusal of the above Rule, with particular reference to the words "subject to the approval" and "suitable premises" makes it clear that the Legislature intended to confer some amount of discretion on the Prohibition & Excise Superintendent in the matter of deciding suitability of the premises. There is nothing in the Rule to indicate either expressly or impliedly that once the conditions specified under Rule 29 are satisfied, the Prohibition & Excise Superintendent is bound to grant the licence. On the other hand, the words "subject to the approval" and "sutable premises", undoubtedly indicate that while assessing the suitability of the premises

selected by the successful tenderer the Prohibition & Excise Superintendent, if necessary, can go beyond the requirements specified under Rule 29. Having regard to the particular facts and circumstances, even after compliance with the requirements under Rule 29, the Prohibition & Excise Superintendent in exercise of his discretion may decline to approve the premises selected by the successful tenderer. However, such exercise of discretion shall not be arbitrary or unreasonable, but must be based upon cogent material having nexus to the purpose sought to be achieved."

The learned Single Judge then adverted to the facts of the case and refused to interfere with the decision of the competent authority not to approve the location proposed by the appellant by recording the following observations:

> "14. It is also relevant to note that in the case on hand one of the grounds for disapproving the premises selected by the petitioner was to avoid unhealthy competition among the neighbouring licensees. It is not as if the 2nd respondent has passed the impugned order without application of mind to the relevant factors, but having called for a factual report from the 3rd respondent, who is the concerned S.H.O., and having considered the entire material on record, the 2nd respondent thought it fit to direct the petitioner to secure an alternative premises to avoid unnecessary complications in future. Such a discretionary order cannot be held to be vitiated on account of extraneous considerations, much less arbitrary or unreasonable, warranting interference by this Court in exercise of jurisdiction under Article 226 of the Constitution of India."

In our opinion, the learned Single Judge's interpretation of Rule 27 of the Rules in **Ch. Subrahmanyeswara Rao**'s case (supra) reflect the correct position of law and there is no reason for

us to take a different view.

In the present case, we find that while declining approval of the site proposed by the appellant, respondent No.1 took into consideration the report of the Station House Officer, which suggested that there was likely law and order problem due to location of the shop at the proposed site. Respondent No.1 also took note of the fact that location of the shop at a place far away from the populous area of Teegalaguttapalli village may not serve the needs of the people. Therefore, it is not possible to hold that the discretion exercised by respondent No.1 is vitiated by arbitrariness or non-application of mind or is influenced by extraneous factors.

It was neither the pleaded case of the appellant before the learned Single Judge nor the learned Senior Counsel has argued that the concerned Prohibition and Excise officer had refused to approve the premises proposed by him due to personal bias, ill-will or malice. The officer concerned was not even impleaded as a party to the writ petition.

In view of the above, we hold that the learned Single Judge did not commit any error by refusing to quash order dated 21-7-2006 passed by respondent No.1 and the appeal is liable to be dismissed. Ordered accordingly.

With a view of avoid future litigation on the subject, we deem it proper to observe that the Commissioner, Prohibition and Excise should examine the feasibility of issuing guidelines, which may be followed by the competent authority while deciding the applications for location of premises/site for establishing liquor shops.

G.S.SINGHVI, C.J.

30th August, 2006.

G.V.SEETHAPATHY,J.

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[1] 2005 (6) ALD 501

[2] 1998 (6) ALT 706